IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7920 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHWIN PORUSHOTTAM PATEL

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

MR ST MEHTA ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/01/2000

ORAL JUDGEMENT

#. Heard Ms.E.E.Saiyed, learned advocate for the petitioner and Mr.S.T.Mehta, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 10-4-1999 passed by

respondent No.2 - The Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention supplied to the detenu, a copy of which is produced at Annexure B discloses the fact that in all 8 criminal cases for the offences made punishable under Section 379 read with Section 114 of IPC were registered at Naranpura Police Station against the petitioner between 2-10-1998 and 2-4-1999. That two witnesses on assurance of anonymity have given the statement against the petitioner on 5-3-1999 and 7-3-1999 respectively. That on the basis of the said material, respondent No.2 has come to the conclusion that the petitioner is dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. However, it has been contended at bar on behalf of the petitioner that the detaining authority before passing the impugned order has failed to consider the aspect of less drastic remedy like opposing or claiming cancellation of bail as available under Section 437(5) of CrPC which disclosed non application of mind rendering the order invalid.

#. The respondent No.2 has filed affidavit in reply dated 18th December, 1999, wherein, in para-9, a statement is made that procedure for cancellation of bail is likely to consume time whereby, the petitioner could not be prevented forthwith from continuing his prejudicial activities.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. On appreciation of facts and circumstances, it is noteworthy that the detaining authority himself has recorded in the impugned order that the petitioner is in judicial custody. The detaining authority has shown apprehension that the detenu is likely to apply for bail and having got himself released on bail, he is likely to indulge into anti social activities which is prejudicial to the public order and as such, the detention order is necessary. That the impugned order does not contain any explanation as to why the bail granted to the petitioner in any of the cases earlier, could not claimed to be cancelled on the ground of alleged repeated activities while the detenu was in judicial custody. Furthermore, the grant of bail in last case, bearing registration No : 198 of 1999 dated 2-4-99 could not have been opposed on the ground of nature and repeated activities of the detenu. Thus, there is no logical explanation much less reasonable explanation for not resorting to less drastic remedy like opposing or claiming the cancellation of bail against the petitioner.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, I am constrained to held that the impugned order having been vitiated for non application of mine renders the order invalid and the petition is required to be allowed and the same is allowed accordingly. The detention order dated 10-4-1999 passed by respondent No.2 against the petitioner is hereby quashed and set aside. The petitioner Ashwin Puroshattam Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 10-1-2000 [A.K.Trivedi, J.]

#kailash#